IN THE

Supreme Court Of The United States

OCTOBER TERM, 1949

434

No. 434

NATIONAL LABOR RELATIONS BOARD,
Petitioner

V.

MEXIA TEXTILE MILLS, INC.
Respondent

BRIEF FOR MEXIA TEXTILE MILLS, INC.

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STATEMENT

There is no issue as to the facts stated by Petitioner, except to point out that the failure to bargain case determined by the Board order related to various transactions between the Union and the Company commencing November 25, 1944. The Board order was dated July 2, 1948, more than four years after the opening of the bargaining relation and more than two years

after the termination of the strike which occurred in the plant of the Company (R. Page 19, et seq.). The form of the order of the Board dated July 2, 1948, was in accordance with the Board's policy directing the Company to bargain collectively with the certified Union (R. Page 36). The petition for enforcement of the order was filed in the court below April 11, 1949 (R. Page 38). Respondent filed its motion for the taking of additional evidence on May 18, 1949. The motion is set forth in full at Pages 55 through 58 of the record and this case turns on the contents of the motion and the question it presented to the court below. For the convenience of the Court, we reprint in the apendix to the brief the motion of Respondent here referred to. This brief Page 11.

It is important to call to the Court's attention the fact that the order was prospective in its nature, and if endorsed by the court, created a bargaining relation to continue in futuro.

SUMMARY OF ARGUMENT

I.

The motion of Respondent to take additional evidence under Section 10 (e) of the statute was addressed to the judical discretion of the court, and the burden is on the Board to show that the order of the court below is arbitrary, unreasonable, or an abuse of discretion. This burden has not been sustained.

II.

The change in the substantive law defining the bargaining relation, the lapse of time since the entry of the order of the Board, and the fact that following the order of the Board the Union and the Company had negotiated extensively without reaching an agreement, together with the fact that the developments since the order of the Board were unknown to the Board and might require the Board under its administrative policy to modify the order, sustained the discretion of the court below in directing an inquiry into the developments since the order of the Board.

ARGUMENT

Respondent does not contend here and did not contend in the court below that compliance with the order of the Board is a defense to the enforcement proceedings filed by the Board. The court below did not hold that compliance with an order of the Board was a defense to its enforcement, as the court below has carefully explained in *National Labor Relations Board V. The Cooper Co., 179 Fed. 2d 241.* There, in commenting upon the decision in the instant case, the court below said:

> "Indeed, nothing was decided there (speaking of the Pool and Mexia cases). The Court, expressly deferring decision, merely referred the matter back to the Board for its assistance in furnishing further information and for its recommenda-

tions or requests in the light of such further information."

The bulk of Petitioner's brief is consumed with proving what is admitted in the case at bar.

Nor is there involved in the case at bar a denial by the court below of enforcement of the order of the Board. There is no frustration of the administrative wisdom and expertness of the Board. The attack made upon the court below in the petition for certiorari and the plaintive plea that the Board proceeding has become a merry-go-round are inappropriate to the unvarnished facts. Here as in most cases the facts and record are more important than generalities, and the actual situation in the court below must be viewed from its perspective to evaluate its order properly.

So considered the court below was right. First it is apparent that Respondent had in good faith accepted and complied with the order of the Board. This statement is made not by way of defense to the compliance proceeding, but solely as a statement of fact which was before the court below and supported by the letter of the Respondent shown at page 57 of the record, and reprinted in the appendix to this brief as a part of Respondent's motion. Respondent's letter to the Union at the time the order of the Board was accepted makes it perfectly plain that the issue which had barred an agreement in the ancient negotiations had been the Union requirement that non-union employees be discharged. Under the Labor Management

Relations Act of 1947, the one sided bargaining which had prevented an agreement between the parties in 1945, appeared to have been changed to a reciprocal requirement of bargaining in good faith. In that spirit, Respondent said, it was "more than willing to accept the recommendations of Mr. Lindener and post the notice he requests in our plant" (R. Page 58). That letter demonstrated no intransigent attitude, but rather a wholehearted desire to bargain in the spirit of the statute and reach an agreement.

Following that letter, Respondent's motion showed that it had extensively bargained with the Union, but that no agreement had been reached (R. Page 56), and that Respondent was now concerned as to whether the Union in fact represented its employees. Respondent suggested in its motion "that the Board should now take into account the existing facts and circumstances in the plant of the Respondent and determine whether the policies of the Act will be effectuated by a dismissal of the instant proceeding before the Board, or whether a new collective bargaining election should be conducted by the Board or what other changes in the order of the Board may be requisite to effectuate the policies of the Act." (R. Page 56). Bearing in mind that the order before the court had the effect of cementing a future relation between the Union and the Company, it is plain that the facts before the court below were appropriate for the exercise of further administrative assistance. All of the considerations mentioned by the Board in its brief, to-wit, the possibility of resumption of the unfair labor practice, the possibility

of delay in the judicial requirement of bargaining, vanish as judicial factors in the light of the facts. The court below was right in feeling that the situation presented to it, particularly in the radical changes made in State and Federal law since the bargaining in question, justified the court in calling upon the Board for its administrative wisdom before providing judicial sanctions to an order which may have become inappropriate and moot.

In fact the action of the court below would have expedited Board policy and brought it to its proper culmination under the statute. If the Board, after considering the developments since the record was closed, felt that judicial enforcement was appropriate, there is little doubt that the court below stood ready to grant enforcement. If in fact the Board, after taking cognizance of the situation, desired in its administrative wisdom to alter its order, then the Board would have achieved a signal step towards effectuating its policies. For an order which had become inappropriate could be modified and enforced without the delay of new proceedings before the Board.

Tested by established principles of law, the court below was right. Only three decisions of this Court throw light upon the question.

The first opinion is *Southport Petroleum Co. v. National Labor Relations Board, 315 U.S. 100-109; 86 Law Ed. 718.* This Court held that an application to take additional evidence under Section 10 (e) of the

statute was addressed to the sound judicial discretion of the Circuit Court. There the Circuit Court had held that the proffered evidence was not material and this Court held that upon such finding the Circuit Court properly denied the application to take additional evidence.

In *National Labor Relations Board v. Indiana and M.E. Co., 318 U.S. 9-36; 87 Law Ed. 579*, the Court concisely stated the governing law relative to the proceeding in the case at bar:

> "Section 10(e) of the National Labor Relations Act authorizes the Circuit Court of Appeals to order additional evidence to be taken when it is shown 'to the satisfaction of the court that such additional evidence is material,' and that there were reasonable grounds for the failure to adduce the evidence at the hearing. In Southport Petroleum Co. v. National Labor Relations Bd. 315 US 100, 104, 86 L ed 718, 723, 62 S Ct. 452, we sustained the Board's contention and held that an application for leave to adduce additional evidence thereunder 'was addressed to the sound judicial discretion of the court.' The Board does not suggest that a different construction should be put upon the Act when the court below decides against, rather than for it. The question it has submitted for our decision is whether the court below 'acted arbitrarily' and 'abused its discretion.' Thus, in order to decide this case in favor of the Board we would have to hold not merely that the evidence

of dynamiting would be a matter of indifference in our own view of the case, but that the court designated by statute to exercise discretion in the matter and which desired to know the facts about it before passing on the sufficiency of the evidence and the impartiality of the examiner and which thought the finder of the facts should hear and consider such evidence, must not only have been in error but must also have abused its judicial discretion."

It came before this Court again in *National Labor Relations Board v. Donnelly Garment Co., 330 US 319; 91 Law Ed. 854.* There the Circuit Court had found a change in circumstances rendering evidence now relevant which had been irrelevant at the first hearing. This Court explained that in the Indiana and Michigan case developments occurring since the order, considered in the light of the circumstances before the Circuit Court, had justified it in requiring additional testimony and that it had not abused its discretion. It made it plain that Section 10(e) of the statute did not justify "reversals" for the purpose of granting a new trial, but additional evidence only upon relevant matters relating to the order itself.

The real question in the case at bar is the question of fact and logic involved in determining whether the radical change in circumstances since the order of the Board might justify a different administrative policy than the order expressed. It appears that the Board had no knowledge of the changed circumstances, but

had perfunctorily sought enforcement for the simple reason that no agreement had been reached between the parties since the order of the Board. The relevance of the developments is plain. If in fact the parties had been unable to reach an agreement after mutual negotiations in good faith, then the ancient certification under Board policy might be disregarded by any other Union, or by the Company. Following a genuine impasse, judicial enforcement and the "potential threat of contempt proceedings" would not only fail to effectuate the policy of the Board, but subject the Respondent to unjustified expense in re-litigation of the preceding bargaining sessions. It is, of course, no answer to the problem of the Respondent, and the wisdom of the court below, for the Board to suggest that it would probably not institute contempt proceedings if the facts in the motion were correct. Nor does it justify the Board in seeking enforcement of an archaic order, where the circumstances have radically changed, to explain that Respondent would probably not be in contempt of court for violating it. The court below was called upon to render its own order, an order carrying its command of obedience. That court was justified in its desire that its order not put the Respondent to the necessity of violation. The short of the matter is that the court felt that the Board's administrative policy should be brought to bear upon the developments occurring since the rendition of the ancient order. That is judicial discretion, exercised with the enlightment of the pronouncements of this Court. It should not be frustrated by distorting it into a ruling that compliance

with the order itself is a defense. That is not what the court held, nor what the case involves.

Respondent prays that the order of the court below be affirmed.

JOHN M. SCOTT
Attorney for Respondent

Of Counsel:
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APPENDIX

In the United States Court of Appeals for the Fifth Circuit

Motion of Mexia Textile Mills, Inc. for the Taking of Additional Evidence, and in Response to Petitioner's Motion for Summary Decree — Filed May 18, 1949.

(File Endorsement Omitted)

(Title Omitted)

On December 18, 1947, the trial examiner issued an intermediate report on the above case, recommending that Respondent post the usual notices and enter into collective bargaining with the Union. On December 31, 1947, Respondent posted the notice to employees as recommended by the trial examiner, and directed a letter to the Regional Director of the National Labor Relations Board, a copy of which letter is attached to this motion.

1.

Thereafter in the early part of the year 1948, Respondent entered into good faith bargaining with the Union and a number of meetings were held during the year 1948. The parties negotiated extensively and exchanged various proposals, looking to the execution of a written agreement, but no final contract has yet been reached.

2.

A complete stenographic transcript of the meet-
89 ings held during the year 1948 has been kept and preserved, and the Union has adopted an arbitrary, capricious and intransigent attitude which has prevented an agreement.

3.

Respondent alleges that it does not in good faith believe that the Union is now the collective bargaining representative, within the meaning of the National Labor Relations Act, for the majority of the employees within Respondent's plant. Respondent alleges that the collective bargaining relations that has existed since Respondent accepted the order of the Board is not reflected by the order of the Board, or in the record in the instant proceeding, and that the Board has no official knowledge of the facts and circumstances herein set forth by Respondent. That these facts and circumstances have occurred since the record in the instant case was closed and that Respondent was therefore unable to present these facts to the Board for its consideration. That the case has become moot by reason of the facts and circumstances hereinabove set forth. That the record in the instant proceeding relates to facts and transactions which occurred during the years 1945 and 1946, and particularly to a strike that occurred at about that time. That the Board should now take into account the existing facts and circumstances in the plant of the Respondent and determine whether

the policies of the Act will be effectuated by a dismissal of the instant proceeding before the Board, or whether a new collective bargaining election should be conducted by the Board, or what other changes in the order of the Board may be requisite to effectuate the policies of the Act.

WHEREFORE, Respondent prays that the Court direct the Board to reopen this case for the purpose of permitting Respondent to offer the additional evidence referred to in the above motion.

Respectfully sùmbitted,

MEXIA TEXTILE MILLS, INC., *Respondent*

By SAMUELS, BROWN, HERMAN & SCOTT
JOHN M. SCOTT
JOHN M. SCOTT
1210 Electric Building
Fort Worth, Texas

90 *Duly sworn to by John M. Scott.*
Jurat omitted in printing. (All in italics.)

91 Dr. Edwin Elliott, Regional Director
National Labor Relations Board
1101 T & P Building COPY
Fort Worth, Texas

Re: Mexia Textile Mills, Inc.
Case No. 16-C-1301

Dear Doctor Elliott:

We have received a copy of the recommendations of Mr. Sidney Linder concerning the hearing held in

Mexia in August of 1947, relation to our relations with the CIO during the years 1945 and 1946.

At the time the hearing was held the company did not see fit to argue with Mr. Schuler, the union representative, concerning the disagreements and strikes which even at that time involved matters two years old, and we can understand that since the company d idnot offer witnesses, Mr. Lindner's recommendations are based entirely on Mr. Schuler's contentions.

Be that as it may, however, the company's policy always has been that the employees have a right to belong to the union if they see fit and that they have a right to refuse to belong to the union if they see fit. At the time we put into effect the wage increases given our employees during the war period, we were of the opinion that they were justified and that the employees needed the increases. The failure to agree upon a contract with the union then was caused principally by the fact that the union insisted on requiring our employees to remain members or lose their jobs and the company never did see fit to agree to such a proposal.

All of that, however, is water under the bridge. The National Labor Relations Act provides now, as we understand it, that neither side can make the other give any concessions and that the bargaining will be carried on free of intimidation and threats from either the union or the company. In such a spirit we are more than willing to accept the recommendations of Mr.

Lindner and post the notice he requests in our plant. We are sending a copy of this letter to each of our employees, together with a copy of the notice, and forthwith posting it in our plant as requested by Mr. Lindner.

We are likewise sending a copy of this letter to the Union representative, Mr. Schuler. We assure you and Mr. Schuler that there are no hard feelings on the part of the company regarding the difficulties of 1945 and 1946, and we trust that our relations may be friendly in connection with such matters as Mr. Schuler may want to present to us in the future.

Yours very truly,

MEXIA TEXTILE MILLS

By

The relevant provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.) are as follows:

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer-

* * * * *

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * *

The relevant provisions of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. II, Sec. 141, et seq.) are as follows:

SEC. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * for the enforcement of such order and for appropri-

ate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its members, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript.* * *